

SPECIAL CIVIL APPLICATION No. 1148 of 1996

DATE OF DECISION : 11-03-1996

For Approval and Signature :

THE HON'BLE MR. JUSTICE J.M PANCHAL

AND

THE HON'BLE MR. JUSTICE

MODI KANTILAL NARANDAS

Vs.

STATE OF GUJARAT

& Ors.

1. Whether Reporters of Local Papers may be allowed to see the judgment ? NO

2. To be referred to the Reporter or not ? NO

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of the judgment ? NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any other order made thereunder ? NO

5. Whether it is to be circulated to the Civil Judge ? NO

Mr. H.R Prajapati, learned advocate for the Petitioner

Mr. S.P Dave, learned AGP for Respondent Nos. 1 to 3

Mr. S.C Patel, learned Counsel for Respondent No.4.

CORAM : J.M PANCHAL, J.

11-03-1996

The order of detention dated December 4, 1995 passed by the District Magistrate, Ahmedabad in exercise of powers conferred on him by sub-section (2) of Section 3 of the Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 ("The Act" for short) against the petitioner is the subject matter of challenge in the present petition, which is filed under Article 226 of the Constitution.

2. The grounds of detention indicate that the detenu is granted licence to deal in essential commodities, such as Wheat, Rice, Palmolein Oil, etc., under the provisions of Gujarat Essential Articles (Licensing, Control & Stock Declaration) Order, 1981. The Zonal Officer, Jamalpur Zone inspected the Fair Price Shop being run by the detenu on July 12, 1995. The petitioner could not produce any record regarding the purchase and sale of Rice, Edible Oil, etc. and promised to produce the same in the Zonal Office on July 13, 1995. However, petitioner failed to produce any record on July 13, 1995. Under the circumstances, a raid was carried out at the shop of the petitioner on July 14, 1995 in the presence of panchas. During raid, it was found that the detenu had illegally disposed of 500 kgs. Wheat (F.F.A), 404 Kgs. Wheat (F.F.P), 630 kgs. Rice (F.F.P), 380 Kgs. Palmolein Oil by charging higher price than fixed by the authorities. Other irregularities as mentioned in the grounds of detention were also detected. On the basis of the materials placed before it, the Detaining Authority was satisfied that the detenu was acting in a manner prejudicial to the maintenance of supply of commodities essential to the community. The Detaining Authority, therefore, with a view to preventing the detenu from acting in a manner prejudicial to the maintenance of supply of commodities essential to the community, passed the impugned order of detention.

3. It is not in dispute that the procedural requirements as enjoined by the Act and Art. 22(5) of the Constitution have been complied with by the Detaining Authority, Advisory Board and the State Government.

4. Several contentions have been urged by the learned counsel for the petitioner while assailing the validity of order of detention. However, it is not necessary to refer to all of them except one, which in my opinion merits acceptance. The learned counsel for the petitioner submitted that Son of the detenu had addressed a representation dated December 21, 1995 to the Central Government, through the Superintendent, Surat District Jail, Surat and though the Superintendent, Surat District Jail, Surat was requested to forward the same to the Central Government for its consideration, the

Superintendent, Surat District Jail, Surat failed to forward the same to the Central Government, and therefore, the continued detention of the detenu should be held to be illegal. This ground of challenge is raised in para 3 (o) of the petition.

5. Though Superintendent, Surat District Jail, Surat; who is impleaded as Respondent No. 3, is duly served, no Affidavit -in-reply has been filed by him controverting the statements made in the petition.

6. Mr. K.C Vaghela, Under Secretary to the Government of Gujarat, Food & Civil Supplies Department, Sachivalaya, Gandhinagar has filed Affidavit in opposition on behalf of Respondent No. 2 ie., The State of Gujarat. In para-6 of the said reply affidavit, it is stated that as no request was made in the representation dated December 21, 1995 to forward the representation to the Central Central, it was not necessary for the State Government to forward the representation to the Central Government, and accordingly, the representation has not been forwarded to the Central Government by the State of Gujarat.

7. Mr. S.P Dave, learned Asstt. Government Pleader appearing for Respondent Nos. 1 to 3 has gone through the jail record and stated that the record does not indicate that the representation received from the son of the detenu was forwarded by the Superintendent, Surat District Jail, Surat to the Central Jail for its consideration.

8. From the facts which are almost admitted, it is evident that the son of the detenu had prepared a representation dated December 21, 1995 on behalf of detenu. The said representation alongwith additional copies was forwarded to the Superintendent, Surat District Jail, Surat by the son of detenu alongwith a forwarding letter. In the forwarding letter, Superintendent, Surat District Jail, Surat was requested to send copies of representation to the authorities who are competent to give relief to the detenu. The forwarding letter dated December 21, 1995 is produced at Annexure "C" to the petition. From the statement made by the learned counsel for the respondent Nos. 1 to 3, it is apparent that the Superintendent, Surat District Jail, Surat did not forward one of the copies of the representation to the Central Government for its consideration. The State Government has taken the stand that it was not necessary for it to forward the copy of representation to the Central Government because no request was made in the representation to the State Government to forward it to the Central Government. It hardly needs to be emphasized that the detenu has a right to make representation to the Central Government because under the scheme of the Act, the Central Government has power to revoke order of detention

passed either by the specially authorized officer of the State Government or the State Government. In the grounds of detention, it was indicated to the detenu that the detenu was free to make a representation to the Central Government through the Superintendent, Surat District Jail, Surat, therefore, when requested, the Superintendent, Surat District Jail, Surat should have forwarded a copy of representation to the Central Government for its consideration. On the facts and in the circumstances of the case, I am of the view that refusal on the part of Superintendent, Surat District Jail, Surat to forward a copy of the representation to the Central Government has infringed the right of detenu to make effective representation against the order of detention which is guaranteed under Art. 22 (5) of the Constitution. The continued detention of the detenu, therefore, will have to be held to be illegal.

9. For the foregoing reasons, the petition succeeds. The continued detention of the detenu is held to be illegal. The respondents are directed to set at ..

immediately unless his presence is needed with reference to any other case. Rule is made absolute accordingly with no order as to costs.

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Prakash*

SPECIAL CIVIL APPLICATION NO. 132 of 1996

DATE OF DECISION : 11-03-1996

For Approval and Signature :

THE HON'BLE MR. JUSTICE J.M PANCHAL

AND

THE HON'BLE MR. JUSTICE

MAHIPATSINH HEMUBHAT JADEJA

Vs.

STATE OF GUJARAT

& Ors.

1. Whether Reporters of Local Papers may be allowed to see the judgment ? NO

3. Whether their Lordships wish to see the fair copy
of the judgment ? NO

4. Whether this case involves a substantial question
of law as to the interpretation of the
Constitution of India, 1950 or
any other order made thereunder ? NO

5. Whether it is to be circulated to the Civil
Judge ? NO

Mrs. Sangeeta Pahawa, learned advocate for the Petitioner
Mr. S.P Dave, learned AGP for Respondent Nos. 1 to 3
Mr. S.C Patel, learned Counsel for Respondent No.4.

CORAM : J.M PANCHAL, J.
11-03-1996

ORAL JUDGEMENT

The order of detention dated December 5, 1995 passed by
the District Magistrate, Rajkot in exercise of powers conferred
on him by sub-section (2) of Section 3 of the Prevention of
Black-marketing and Maintenance of Supplies of Essential
Commodities Act, 1980 ("The Act" for short) against the
petitioner is the subject matter of challenge in the present
petition, which is filed under Article 226 of the Constitution.

2. The grounds of detention indicate that the petitioner
is proprietor of Shakti Oil Industries, situated at Village
Jamnawad, Taluka-Dhoraji, District-Rajkot and is holding
licence to deal in essential commodities viz., Groundnut Oil on
wholesale basis as well as to produce the same. The petitioner
is purchasing edible oil from different vendors and after
tanning the same is selling in the open market. On October,
12, 1995, the Supply Officer, Rajkot carried out inspection of
the premises were industry belonging to the detenu is being
run. Certain bills were found which indicated that Shrinath
Industries, Shahpur had sold ground nut oil to the petitioner.
During the course of investigation, it transpired that Shrinath
Industries did not exist at all. Again on November 21, 1995
inspection of the industry belonging to the detenu was carried
out. This time, excess stock of 430 kg. edible oil was found.
Sample was also drawn and sent for analysis to the Regional
Food Laboratory, Rajkot. The report dated November 29, 1995
issued by the Laboratory indicated that the sample was

adulterated. On the basis of materials placed before it, the Detaining Authority was satisfied that the detenu was acting in a manner prejudicial to the maintenance of supply of ground nut oil, which is a commodity essential to the community. The Detaining Authority, therefore, with a view to preventing the detenu from acting in a manner prejudicial to the maintenance of supply of commodity essential to the community, passed the impugned order of detention.

3. It is not in dispute that procedural requirements as enjoined by the Act and Art. 22(5) of the Constitution have been complied with by the Detaining Authority, Advisory Board and the State Government.

4. Several contentions have been urged by the learned counsel for the petitioner while assailing the validity of order of detention. However, it is not necessary to refer to all of them except one, which in my opinion merits acceptance. The learned counsel for the petitioner submitted that advocate for the detenu had prepared a representation dated December 13, 1995 and the representation together with seven additional copies. was sent to the Superintendent, Surat District Jail, Surat to enable him to forward the same for consideration of the competent authorities and as there is failure on the part of Superintendent, Surat District Jail, Surat to forward one of the copies of representation to the Central Jail for its consideration, the continued detention of the detenu should be held to be illegal. This ground of challenge is raised in para 3 (o) of the petition.

5. Though Superintendent, Surat District Jail, Surat; who is impleaded as Respondent No. 3, is duly served, he has not filed any Affidavit-in-reply controverting the statements made in the petition.

6. Mr. K.C Vaghela, Under Secretary to the Government of Gujarat, Food & Civil Supplies Department, Sachivalaya, Gandhinagar has filed Affidavit-in-reply on behalf of Respondent No. 2 ie., State of Gujarat. However, the said Affidavit-in-Reply does not indicate that copy of the representation received by the State Government was forwarded by the State Government to the Central Government.

7. Mr. S.P Dave, learned Asstt. Government Pleader appearing for Respondent Nos. 1 to 3 has gone through the jail records and stated that though seven copies were duly received by the Superintendent, Surat District Jail, Surat, the record does not indicate that one of the copies was forwarded by the Superintendent, Surat District Jail, Surat to the Central Government for its consideration.

8. From the facts which have been stated above, it is evident that on behalf of detenu his advocate had prepared a representation on December 13, 1995. The said representation alongwith seven additional copies, was sent to the Superintendent, Surat District Jail, Surat alongwith a forwarding letter dated December 13, 1995 which was sent by Registered Post A.D. A copy of the forwarding letter sent to the Superintendent, Surat District Jail, Surat is produced by the petitioner at Annexure "C" to the petition. The letter at Annexure "C" indicates that the Superintendent, Surat District Jail, Surat was requested to send copies of the representation to the authorities mentioned in the grounds of detention, for their respective consideration. It is an admitted position that though the Superintendent, Surat District Jail, Surat had duly received seven additional copies of the representation, he had not forwarded one of the copies of the representation to the Central Government for its consideration. It is also an admitted position that the State Government has also not forwarded the copy of representation received by it to the Central Government. It hardly needs to be emphasized that the detenu has a right to make a representation to the Central Government as the Central Government has powers to revoke the order of detention. In fact, in the grounds of detention it was indicated to the detenu that he was free to make representation to Central Government through Superintendent, Surat District Jail, Surat. When requested, the Superintendent, Surat District Jail, Surat should have forwarded one of the copies of representation to the Central Government for its consideration. Having regard to the facts and circumstances of the case, I am of the opinion that failure on the part of the Superintendent, Surat District Jail, Surat to forward one of the copies of the representation to the Central Government for its consideration has infringed provisions of Article 22 (5) of the Constitution, and therefore, the continued detention of the detenu will have to be held to be illegal.

9. For the foregoing reasons, the petition succeeds. The continued detention of the detenu is held to be illegal. The respondents are directed to set at liberty the detenu immediately unless his presence is needed with reference to any other case. Rule is made absolute with no order as to costs.

Prakash*